

* Before The Zoning Board

* of Howard County, Maryland

* Zoning Board Case No. 1082M

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DECISION AND ORDER

On January 13, 2010, the Zoning Board of Howard County, Maryland considered the petition of Highland Holding, LLC for an amendment to the Zoning Map of Howard County, so as to reclassify from the RR-DEO (Rural Residential-Density Exchange Option) to the BR (Business-Rural) Zoning District, 3.06 acres of land located on the south side of Highland Road, approximately 600 feet northwest of MD 108, and identified as Tax Map 40, Grid 4, Parcel 50, 12857 Highland Road.

The notice of the hearing was advertised and the subject property was posted, as evidenced by the certificates of posting and advertising, which were made part of the record. The Petitioner did not mail notice of the hearing to adjoining property owners but did produce emails from 3 out of the 4 adjoining property owners that indicated they were aware of the request and did not oppose it. As to the 4th adjoining property owner, Ms. Messier, Petitioner proffered that she attended a community meeting on the petition in December, 2009 and was informed of the Zoning Board hearing date. Based on this information and the directory nature of the mailing requirements according to Section 16.204(e)(2) of the Howard County Code, the Board deemed the notice requirements substantially met and decided to proceed. Pursuant to the Zoning Board's Rules of Procedure, all of the reports and official documents pertaining to the petition, including the petition, the Technical Staff Report of the Department of Planning and Zoning, and the Planning Board's Recommendation, were made part of the record. Both the Department of

Planning and Zoning and the Planning Board recommended approval of the petition, with some conditions and/or clarifications, which will be discussed in this decision.

Courtney Watson, Zoning Board member, recused herself from participation in the decision in this case, based on an existing business relationship with Chef Boston, a part owner of the proposed restaurant.

The Petitioner was represented by Sang Oh, Esquire. Several nearby property owners appeared in opposition to the petition.

After careful evaluation of all the information presented, the Zoning Board of Howard County makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The Petitioner requests rezoning of 3.06 acres of land from the RR-DEO to the BR Zoning District. The Petitioner's proposal for rezoning is subject to a proposed Preliminary Development Plan ("PDP"), pursuant to Section 117.1 of the Howard County Zoning Regulations. The PDP limits the intended use of the subject property to a standard restaurant with approximately 5,085 square feet of floor area/patio area and less than 100 seats. The Petitioner also proposes an 82 space parking lot to the south and southeast of the existing building, although only 72 spaces would be required under the proposed use of the subject property.

The Petitioner proposes no significant exterior changes to the existing building which is a two-story, frame, single-family detached dwelling. This building's original construction pre-dates the first zoning regulations in Howard County in 1948, although a more recent addition to the side and rear was accomplished sometime after the advent of zoning. In addition to the building and the parking lot, Petitioner proposes a short driveway to the parking lot from an

entrance adjacent to the northeast corner of the subject property. In addition, a trash receptacle enclosure is shown as proposed to be located at the southeast corner of the parking lot.

The restaurant is proposed to be open seven days a week but only for lunch and dinner, at hours deemed acceptable by the Zoning Board.

2. Mr. Robert Vogel, Civil Engineer, testified on behalf of the Petitioner. Mr. Vogel presented various exhibits to the Board illustrating Petitioner's proposal, including the PDP (Ex. 1A), a plat showing the zoning of the subject property and surrounding properties (Ex. 1B), an aerial photo of the subject property and vicinity (Ex. 1C), an illustrative plan of the proposed "Fat Duck" restaurant (Ex. 1E). Mr. Vogel testified, and DPZ confirmed in its Technical Staff Report, that the subject property was located within the No Planned Service Area for the Howard County Water and Sewerage Master Plan, and that it has over 300 feet of frontage on Highland Road, a major collector highway.

Mr. Vogel testified that the property to the northwest of the subject property, although zoned RR-DEO like the subject property, had been used for many years as a contracting business. Mr. Vogel indicated that the adjoining property to the southeast, parcel 52, and the next property on the same side of Highland Road as the subject property between it and MD 108 are commercially zoned, either B-1 or B-2. A commercial communications tower is located on the northwest corner of parcel 52. Boarman's general store is located between the subject property and MD 108. Mr. Vogel testified that the properties across Highland Road were zoned RR-DEO.

Mr. Vogel testified that the existing pond located in the southwestern portion of the subject property was proposed for retention along with the woods at the periphery of the subject property. Mr. Vogel noted that the property sloped rather steeply down towards the pond-

he indicated that the single-family homes across Highland Road from the subject property were 16 feet above Highland Road and considerably higher above the pond.

Mr. Vogel testified that the access to the subject property was not proposed to be located across from any of the houses across Highland Road, but rather was proposed to be located adjacent to the Boarman property as an accommodation to the community. Mr. Vogel testified that the Petitioner proposed to provide landscaping on a berm next to Highland Road, so that any headlights of cars using the proposed parking lot would be blocked by the berm. Mr. Vogel also indicated that the Petitioner had offered to augment screening on the residential properties across Highland road. Mr. Vogel testified that the proposed access point and parking would necessitate variances, which would only be applicable upon rezoning, and that if the variances are not granted, the plan would have to be modified to remove the need for the variances. Mr. Vogel testified that the parking was proposed to be located in the present location due to the limits of the site and in order to be consistent with the Highland Design Guidelines. He also indicated that excess parking was proposed so that ample parking was available, including parking for Highland festivals and functions.

Mr. Vogel testified that the details of the sight distance requirements would be finalized at the site development plan stage of development if rezoning were granted, but that Highland Road in this area is straight and no topographic characteristics that reduce or block sight distance are present, so that sight distance is expected to be adequate.

Mr. Vogel testified that Highland Road was appropriate for access to a restaurant. He indicated that the trip generation for a restaurant would not have much effect on peak hour traffic at all.

Mr. Vogel that the proposed restaurant use in this location was compatible with surrounding uses. He noted that the closest uses to the subject property were commercial uses, and that the residential uses across Highland Road were a significant distance from the subject property, and that the impacts of the access and commercial parking lot would be minimized by the proposed landscaping and berm. Mr. Vogel indicated that no significant additional landscaping was proposed adjacent to the residentially-zoned property to the rear of the subject property because no development was proposed there but he also said that extra landscaping could be accommodated in that area. Mr. Vogel testified that type "C" landscaping was proposed to be used. He also indicated that the proposed lighting and signage to be used would be consistent with the Highland Design Guidelines.

3. Mr. Niles Morton, a principal of Highland Holding, testified as to the need for a restaurant in Highland. He indicated that the chef at the Milton Inn, Chef Boston, would be the chef at the proposed restaurant, the "Fat Duck". Mr. Morton indicated that the proposed restaurant would serve lunch and dinner seven days a week, and that it would employ 70-90 employees, many of them on a part-time basis.

Mr. Morton indicated that Chef Boston would like to use local vegetables, flowers and meat in the restaurant where applicable. He also testified that the proposed restaurant would provide casual fine dining, suitable for local clientele, a need that was not fulfilled at this time. Mr. Morton testified that the Petitioner would not object to reasonable limits on the hours of operation of the restaurant. He also indicated that the Petitioner had, and would continue to, work with the Greater Highland Crossroads Association in terms of the restaurant's compatible operation in the community.

4. Mr. Daniel O'Leary, President of the Greater Highland Crossroads Association, testified in support of the proposed rezoning and proposed use of the subject property for a restaurant. He indicated that the Executive Committee of the Association voted unanimously in favor of the rezoning/restaurant use in May of 2008, and that a significant majority of the entire membership voted in favor of the proposal as well. Mr. O'Leary indicated that he lives across from the subject property along Highland Road, approximately 400 feet from the subject property. Mr. O'Leary indicated that the Association, with about 100 members, has opposed other development proposals in the area. Mr. O'Leary testified that the restaurant use, limited as proposed, would be compatible with the community. He testified that the only real intrusion on the residential uses across Highland Road would be the lights from cars using the parking lot but that intrusion would be minimized by the lower level of the subject property than the residential properties, and the blocking nature of the proposed berm. Mr. O'Leary indicated that there have to be compromises with this type of transition situation. He also testified that he thought midnight should be the latest the restaurant should be allowed to be open.

Mr. O'Leary testified that his biggest concern was with the potential for intrusive noise emanating from the restaurant at inappropriate hours.. He indicated that, if the rezoning were granted, the decision should limit prohibit amplified outside sound for parties and receptions Monday through Thursday and limit such sound to from noon to 11 p.m. on Friday and Saturday and noon to 6 p.m. on Sunday.

Mr. O'Leary agreed that the sight distance on Highland Road is good but that despite the fact that the speed limit on the portion of Highland Road in front of the subject property is 30 mph the actual speed of cars is more like 45 mph. He added that increased traffic activity on Highland Road could actually slow down the speed of traffic on the road. He also agreed with

Mr. Vogel that the traffic generated by the proposed restaurant use would not be peak hour traffic.

Mr. Vogel testified that the Greater Highland Crossroads Association has wanted sidewalks from Boarman's to the Post Office, and that Highland Holdings are willing to dedicate land for sidewalk.

5. Two residents of the single-family homes across Highland Road testified in opposition to the request. Mr. David Robinson testified that he and his family lived directly across the street from the house on the subject property. Mr. Robinson opposed the request based on the resulting traffic, noise, smells, lighting and outdoor events. Mr. Robinson also thought the property should remain in residential use, pointing out that the subject property was surrounded on 3 of 4 sides by residences.

Mr. Fred Davis, speaking for himself and his parents, both of whom live across Highland Road from the subject property, also opposed the proposed rezoning/restaurant use. Mr. Davis echoed Mr. Robinson's reasons for opposition- adverse impact on property values, noise, lighting and traffic. Mr. Davis also indicated that he thought it would be a traffic hazard for people pulling out of the proposed restaurant parking lot into Highland Road. Mr. Davis also indicated that he thought that locating a restaurant on the subject property was too far from the crossroads of Highland Road and MD 108, thus violating the intent of the crossroads commercial area in the 2000 General Plan. Mr. Davis indicated that he thought a restaurant should be located at the crossroads, and that there were available properties for such a restaurant at the crossroads.

6. Two residents testified in favor of the proposal- Ms. Hilda Mathieu and Mr. Kevin Bell. Ms. Mathieu testified that the community really wanted a restaurant in Highland and were very disappointed when the proposed restaurant at the crossroads "didn't happen". Mr. Bell, who

was involved in the proposed restaurant project at the crossroads, Highland Crossing, indicated that the project lost their permit based on Health Department problems.

7. On rebuttal, Mr. Greg Phillips, one of the principals of the Petitioner, testified that the subject property was only 600 feet from the crossroads of Highland Road and MD 108 and was therefore an appropriate location for a commercial use. He also testified that the Petitioner was reluctant to provide an "outside" sidewalk in front of the property but would like to do an "inside" sidewalk to provide a pedestrian connection along Highland Road. Mr. Phillips indicated that the Petitioner's civil engineer, Mr. Vogel, would work with the County to provide such a sidewalk. Mr. Phillips also indicated that the Petitioner would accept a midnight limitation on the restaurant's hours.

8. The Board finds that the subject property is within the No Planned Service Area of the Howard County Water and Sewerage Master Plan and has at least 60 feet of frontage on Highland Road, a collector road. There was no dispute on these facts. As to safe access on Highland Road, the Petitioner presented credible evidence that there was no sight distance problem at the subject property's access points on Highland Road due to curves in the road or topographical conditions, and that there would be very little, if any impact on Highland Road by the traffic generated by the proposed restaurant use because that traffic would not be peak hour traffic, although formal sight distance analysis occurs at the site development plan stage of development. While Mr. Davis expressed the opinion that he thought it would be hazardous for future restaurant patrons to access Highland Road, he offered no credible evidence to support that contention.

9. The Board finds that the use of the subject property as proposed on the Preliminary Development Plan for a restaurant will be compatible with existing land uses in the vicinity of

the site. The Board makes this finding based on the evidence in the record that the subject property is flanked on its northwest and southeast sides by commercial uses, and that the nearby residential uses to the property's rear and across Highland Road would be fairly distant from the relatively small restaurant use and that these existing uses would be adequately buffered by existing and proposed buffering, including a substantial proposed berm and landscaping screening the residentially-zoned properties across Highland Road from any restaurant-related activities on the subject property, particularly the lights of cars accessing the proposed parking lot. The Board also makes this finding based on the restrictions as to the hours of operation and outdoor amplified sound which were imposed by the Board and consented to by the Petitioner, as detailed below.

10. The Board finds that, based on the evidence in the record, the proposed BR District at this location, limited to the restaurant use which is proposed on the PDP, will allow the development of a business that will support the agricultural industry to some extent through the sale of local agricultural products to the restaurant, will serve the needs of the rural residential community of Highland for a restaurant use, and will provide an opportunity for a business use that is relatively rare in the rural areas of the County.

11. The Board finds that based on the evidence in the record, the relatively small proposed restaurant use will generate low to moderate amounts of mainly non-peak hour business-related traffic, which will not adversely affect the safety of access onto Highland Road. As to sight distance, the Board finds that the section of Highland Road on which the subject property fronts is fairly straight and without obstructing topographical conditions so that the sight distance appears to be adequate, although this fact will be confirmed at the site development plan stage of development.

12. The Board finds that its findings as to the compatibility of the proposed restaurant use are based on certain limitations as to the proposed restaurant's hours of operation, conditions which Petitioner accepted on the record, including that the restaurant would be open for only lunch and dinner, that it would close no later than midnight seven days a week, and that there would be no outside amplified sound Monday through Thursday, and that the permitted hours of outside amplified sound on Friday and Saturday would be from noon to 11 p.m., and on Sunday from noon to 8 p.m.

13. The Department of Planning and Zoning noted that, if rezoning is granted several setback requirements become effective under which Petitioner's proposed PDP would require variances for the resulting setback encroachments. DPZ recommended that the granting of the BR PDP be on a contingent basis so that if the necessary variances were not granted, the property's zoning would revert to RR-DEO. The Board finds that this proposed condition to be unnecessary and instead finds that if Petitioner is not able to have the necessary variances approved upon rezoning, that it will have to alter its PDP to avoid the need to for the variances. If these PDP alterations are substantial, Petitioner will be required to return to the Zoning Board for a decision on those proposals.

14. The Board also noted that there was testimony in the record that the Highland community needed and wanted a pedestrian walkway/sidewalk from Boarman's store to the post office, and the Petitioner was willing to work with the County to provide a continuous pathway through its property in the site development plan process, if feasible and consistent with County regulations.

15. The Board makes all the above findings based on the testimony presented by the Petitioner at the hearing and the Technical Staff Report of the Department of Planning and Zoning, both of which it accepts as convincing, except as noted above..

CONCLUSIONS OF LAW

1. The Petitioner, as one seeking a piecemeal reclassification to the BR (Business Rural) Zoning District has the burden of meeting the criteria of Sections 117.1B. 1.-3. and 117.1G. 3. of the Howard County Zoning Regulations. The evidence which Petitioner has presented at the Board hearing, and the information contained in the Technical Staff Report of the Department of Planning and Zoning, establish that Petitioner has presented substantial evidence that meets the above-cited criteria.

2. The Board concludes that, based on its findings of fact, it may grant the petition for a BR District on the subject property, as limited by the proposal in the PDP, and as further conditioned by the Board's conditions provided below, based on its conclusion that Petitioner has presented substantial evidence sufficient for the Board to conclude that:

a. The proposed district, to be used for the small restaurant as proposed on the PDP, will accomplish the purpose of the BR District to allow the development of a business that will support the agricultural industry, to serve the need of the rural residential community of Highland for a restaurant, and to provide the opportunity for a restaurant use that is rarely found in the rural areas of the County; and

b. The site meets the criteria of Section 117.1B. of the Zoning Regulations in that the site is within the No Planned Service Area of the Howard County Water and Sewerage Master Plan, it has safe road access and at least 60 feet of frontage on Highland Road, a major collector road on the Transportation Map 2000-2020 of the 2000 General Plan, and that the

proposed location of the proposed use is compatible with existing land uses in the vicinity as limited by the conditions in finding of fact 12 above; and

c. The roads providing access to the site, Highland Road are appropriate for serving the business-related traffic generated by the proposed BR District/restaurant use; and

d. Adequate sight distance along Highland Road can be provided at the proposed points of access to the site; and

e. The proposed landscaped areas can provide adequate buffering of the permitted uses from existing land uses in the vicinity.

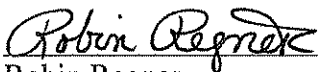
For the foregoing reasons, the Zoning Board of Howard County, Maryland, on this 24th day of March, 2010, hereby GRANTS the Petitioner's request for reclassification of the 3.06 acre subject property from the RR-DEO to the BR Zoning District, based upon the development proposed on the Petitioner's proposed Preliminary Development Plan, submitted as part of the zoning petition subject to the following provisions/conditions:

1. The restaurant use's hours of operation for lunch and dinner only shall be limited to a closing time of midnight, seven days a week based on finding of fact 12 and conclusion of law 2b.;
2. The restaurant use's outside amplified sound shall not be permitted Monday through Thursday and shall be limited to noon to 11 p.m. on Friday and Saturday and noon to 8 p.m. on Sunday based on finding of fact 12 and conclusion of law 2b.;
3. If any required variances according to Petitioner's proposed PDP are not granted, Petitioner will be required to present any substantial changes to its PDP submitted to avoid the necessity for variances to the Board for its decision based on finding of fact 13; and

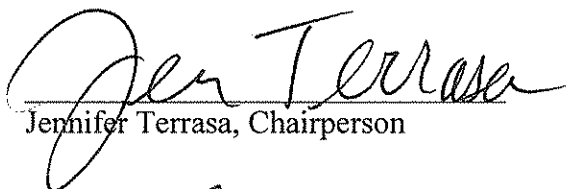
4. The Petitioner, if feasible and if permitted by County Regulations, shall cooperate with the County to provide a continuous pedestrian pathway/sidewalk through the subject property along Highland Road for public use based on findings of fact 4, 7 and 14.

ATTEST:

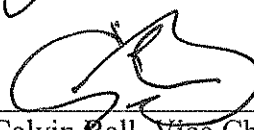
ZONING BOARD OF HOWARD COUNTY



Robin Regner
Administrative Assistant



Jennifer Terrasa, Chairperson

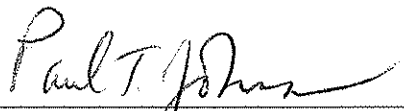


Calvin Ball, Vice Chairperson

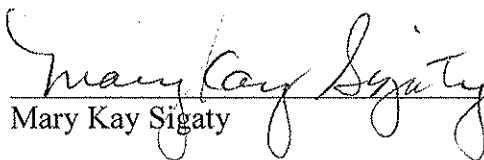
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Did not participate
Courtney Watson